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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933.

No. 208.

NANNIE MAY WILLIAMS,
Petitioner,

v.

THE UNION CENTRAL LIFE INSURANCE COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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STATEMENT OF THE CASE.

The petitioner's summary statement fails sufficiently to disclose:

(1) That this was a suit on a lapsed four-year-old ordinary life annual dividend policy on which the policyholder had used all previously declared annual dividends, and had withdrawn all but $11.12 of the surrender value, and that such $11.12, applied pursuant to a policy provision to purchase term insurance, was insufficient to cover

even the thirty-one days of grace during which, under the grace provision, the policy remained in force; that the insured, though duly notified of premium maturity, allowed the policy to lapse, and specified no different disposition than that which was automatic under a policy provision for the dividend of $74.80 allowable to the policyholder on the premium maturity; that the automatic disposition so stipulated for such dividend was that it should be paid in cash to the policyholder; that after the policy lapse and information thereof to the policyholder, the policyholder executed an order on the company to pay the amount of such dividend in cash to third parties, his creditors; that the company thereupon paid such amount in cash to such creditors on such order; that thereafter the company formally notified the policyholder of the termination of all his rights under the policy, and that thereafter the policyholder died.

(2) That the petitioner's asserted claim, for purpose of recovery herein, is that the former policyholder was non compos mentis when he executed the order for the payment of the dividend—though for other purposes and to his family and physician apparently wholly compos mentis, and that hence, arguendo, despite the company's utmost good faith, the payment of the dividend was ineffectual to discharge the company's obligation to the former policyholder for its amount.

(3) That, further, the petitioner's asserted claim, for purpose of recovery herein, is that, despite the fact that

the policy provision (Tr., p. 85, Art. 11) dealing wholly, completely and specifically with reference to the dividend stipulated for an optional use of the dividend, by election within the thirty-one days of grace, in either (a) payment in cash to the policyholder, (b) application in payment of premium, (c) left to accumulate at 3 per cent interest, with the company if the policy be continued, or (d) applied to the purchase of a paid-up addition to the policy, **and not in any event to the purchase of term insurance**, and despite the further fact that such policy provision (Tr., p. 85, Art. 12) stipulated that, in default of election, the automatic disposition of the dividend should be payment in cash to the policyholder, yet, even in the circumstance of actual payment by the company of the dividend in cash on the order of the policyholder prior to his death, his beneficiary should be entitled after his death to have substituted for such prior cash payment "term insurance" for the full amount of the policy—it having developed after his death that, had he possessed a right to use the amount of the dividend for the purchase of term insurance, and had he done so, the amount would have been sufficient to cover the date of his death.

(4) That, in support of such claim, the petitioner presents heterogeneous contentions as follows:

(a) Dividends (notwithstanding the specific policy provision for the disposition of dividends as such) are a part of the reserve or net value or surrender value of a policy, and, under a provision relating to

such item, may be applied to the purchase of term insurance, or

(b) If dividends are not a part of the reserve or net value or surrender value of a policy, they are "paid-up additions" or "dividend additions" to a policy, and under a provision of the policy relating to the reserve or net value or surrender value of "paid-up additions" or "dividend additions" may be converted into term insurance, or

(c) If dividends are not a part of the reserve or net value or surrender value of a policy, and are not "dividend additions" or "paid-up additions" to the policy, and if such dividends, in the situation which existed in this case, were payable in cash to the policy-holder, the policyholder is entitled, on general principles, and without any permitting stipulation in the contract, and without election or notice to the company, that the company should substitute term insurance for the amounts agreed to be paid in cash, and that, in any event, if his death establish the preferability of such term insurance to cash, his beneficiary is entitled that, after his death, term insurance be substituted for the cash claimed by, and paid to, the policyholder, or on his order, in his lifetime.

(5) That the instrument (Tr., p. 91) called by the petitioner a "policy loan note," for the $898.88 already withdrawn by the policyholder, was not in fact a note or personal obligation of the policyholder, but a mere evidence of lien on, or of deduction or anticipation of, future benefits under the policy, on account of such withdrawal of $898.88.

(6) That the paper of July 15, 1931, referred to (pp. 10-11, 16) was merely a statement or tabulation prepared by the company at the request of Lee & Lee, as a basis for negotiations with the policyholder for restoration or continuance of some part of his insurance, after the policy in suit already had terminated; that such paper does not appear from the evidence ever to have been exhibited to the policyholder, and that such paper was, as the Circuit Court of Appeals accurately declared, "a suggestion of what could be done, not a declaration of what had been done" (contrary to the statement of petitioner with reference to it on page 16 of his petition). Obviously, such paper can have no effect upon the rights of the parties, and it has no pertinency to the issue involved.

PETITIONER'S ASSIGNED REASONS FOR ALLOWANCE OF WRIT.

The petitioner assigns as reasons for the allowance of the writ, principally, the supposed conflict of the decision of the Circuit Court of Appeals in this case with several other decisions.

The issues involved in the specified cases were variant from those in the case at bar. The conflict claimed is not real and substantial, but apparent or superficial only, and arises from casual or loose language or expressions, unimportant to the issues involved and decisions actually made. The decision of the Circuit Court of Appeals in the case at bar is in no proper sense a conflict with any of such deci-

sions, but, on the contrary, is in accord with the elementary principles of law applicable to insurance. It manifests a clear understanding of the terminology of insurance; it employs insurance terms with precision just as they are employed in the policy in suit, and in the statute to which the petitioner refers.

A review of the cases specified by the petitioner will disclose the absence of any real conflict with the same on the part of the decision of the Circuit Court of Appeals.

In the case of *Atlantic Life Ins. Co. v. Pharr*, 59 Fed (2d) 1024, the claim and practice of the insurer was that the current dividend of $115.20 was subject to the use of the insured only in the event the current premium was paid, and that if such premium was not paid the dividend was retainable by the insurer as its own property. The Court rejected this claim, both from a consideration of the dividend clauses of the policy and from the consideration that the insurer was a mutual company. Since the Court held that a sum was available for the benefit of the policyholder, for a definite or specific use of which the policy made no provision, the Court interpreted a rather general and obscure term in the policy, to wit, "the balance of value" (which under a policy provision would be applied to the purchase of extended term insurance), as sufficient to include this additional value of $115.20 which the Court held was available, but which the company had unjustifiably attempted to claim and retain as its property. The term "balance of value" appeared in a clause as follows:

"If the available cash value be insufficient to pay an annual premium and interest as above stated, the company will continue the contract as extended insurance for such time as the **balance of value** will permit."

The decision in the case of *Harvey v. Union Central Life Ins. Co.*, 45 Fed. (2d) 78, is by a divided court.

It involved the respondent's form of contract under an earlier edition, but the issue decided was not involved in the case at bar.

The decision was placed squarely on the ground that, in the circumstances of that case, the extended insurance ran, not from the valuation date fixed in the policy, but from the time of delivery of the policy, and that, inasmuch as the term did not begin to run until the anniversary date after delivery, the extended insurance was in force at the death of the insured without reference to, and without taking into account, any dividend in figuring the period of extended insurance. That such was the decision of the Court appears from the following excerpt from the Court's opinion:

"This shows conclusively that the mere fact of paying an annual premium in advance will not operate to penalize the insured by shortening the term of insurance to less than one year from the agreed date upon which the policy becomes effective and from which the policy year begins to run. The Court was in error in sustaining the contrary view and **must be reversed.**

"In view of this ruling a determination of the other issues becomes somewhat unnecessary and they will be discussed but briefly."

Having thus decided to reverse the judgment below, the Court, in taking up such other issues for casual discussion, intimated also, without deciding and without any careful consideration, and without resting the case on such point, that the dividend could have been used to increase further the term of extension, and it added that "the company held two policy lien **notes**, and even if the dividend should have been paid in cash, it was a creditor in possession with the right to apply the money to the reduction of the loan. • • •"

According to the opinion, there was an actual indebtedness evidenced by "notes," and the Court was not speaking of a policy loan agreement such as we have in the case at bar. If it did have such a lien in mind, the statement of the Court that "it was a creditor in possession with the right to apply the money to the reduction of the loan" is clearly erroneous, being contrary in principle to the doctrine of *Orleans Parish v. New York Life Ins. Co.*, 216 U. S. 517 (as pointed out by the Circuit Court of Appeals (Op., Tr., p. 227).

In the case of *Great Southern Life Ins. Co. v. Jones*, 35 Fed. (2d) 122, a 20-pay policy made no provision for dividends, but had attached to it nineteen so-called premium reduction coupons, one maturing annually in turn so long as the premiums should be paid. Each coupon

contained a promise by the company that it would pay the amount stated therein in any one of several optional settlements. Such options were similar to usual dividend options. Eleven annual premiums were paid, but the twelfth premium was not paid. The Court found that "the premium reduction coupons on December 24, 1921 [12th anniversary of the policy], had a then guaranteed cash value of $425.50 due the insured at the time of his death."

The Court confused "coupons," the payment of which was guaranteed, and which constitute, therefore, a fixed liability of the company, to meet which some fund must be provided, with "dividends," which are declared and are distributable only out of surplus accruing "when by reason of good management, good risk, or the like, the insurer's business shows results above death losses, expenses and reserves" (Op., Tr., p. 224). Then the Court proceeds to confuse "dividends" with "dividend additions." An Oklahoma statute required that each policy issued should provide for a stipulated form of insurance, the net value of which should be at least equal to the reserve at the date of default on the policy and all dividend additions thereto, if any, less any existing indebtedness to the company. The Court, guilty of errors of expression due to a lack of familiarity with the principles and terminology of the insurance business, could have reached the same result had it known that a reserve, according to the assumed mortality table and rate of interest, was kept, and was required to be kept, under funda-

mental principles of insurance, to meet not only the face amount of the insurance as a death benefit, but also to meet each maturing coupon attached to the policy.

First Texas State Ins. Co. v. Smalley, 111 Tex. 68, and *Occidental Life Ins. Co. v. Jamora*, T. C. A. 44 S. W. (2d) 808 are cited as interpreting the term "dividend additions" in a Texas statute as meaning "dividends." But in neither case did the policy involved make provision for the dividends, and in neither case was the Court attempting to arrive at the meaning of the term "dividend additions."

The Jamora case and *Amicable Life Ins. Co. v. White*, T. C. A., 38 S. W. (2d) 860, are cited as "probably" in conflict with the holding by the Circuit Court of Appeals in the case at bar that a withdrawal of the cash value or an advance on "the sole security of the policy" constitutes, not a personal obligation of the policyholder, but a mere evidence of lien on, or of deduction or anticipation of, future benefits under the policy. No such issue was involved in the two cases cited, and there was not even dictum to the contrary.

ADDITIONAL FACTS AND DISCUSSION.

For additional statement of facts and discussion of the provisions of the contract, the terms of a statute referred to by the petitioner, and the well-understood principles of life insurance, meaning of insurance terms, and

computation of insurance reserves and net values, the respondent includes herein, for the convenience of the Court, as an appendix to this brief, its brief filed in the Circuit Court of Appeals.

Respectfully submitted,

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Dated August 2, 1933.